

ARKANSAS BAR EXAMINATION

JULY 1996

2 questions
30 minutes

CONSTITUTIONAL LAW

QUESTION 1

A. Thoreau placed a sign in his front yard protesting FBI treatment of the Montana Freeman. The police came to his home and informed him that a city ordinance prohibited all yard signs in residential neighborhoods except signs indicating that the property was for lease or sale. No such prohibition existed for commercial establishments. The ordinance contained a statement of purposes, part of which recited that the proliferation of yard signs would create ugliness, visual blight, and clutter in the city. A. Thoreau challenged this ordinance. What legal issues would he present to support his position that the ordinance was invalid?

QUESTION 2

On their way back to City Hall, the police stopped B. Capone for running a stop sign. (He said that he was not paying attention as he was enjoying the latest release by the Nine Inch Nails.) A check on the police computer revealed an outstanding warrant for his arrest. His vehicle was then searched and a bag of marijuana was discovered and he was charged with possession of the drug. It was later discovered that the warrant had been quashed prior to the arrest but because of clerical error it had not been removed from the police computer. Mr. Capone sought suppression of the marijuana as the fruit of an unlawful search. The state argued that the exclusionary rule should not be applied to such an innocent clerical mistake. What legal issues would be presented by the state and by Mr. Capone to support their positions?

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3 questions 30 minutes

CONTRACTS

Fact Situation A:

A Construction Contract between Owner, a citizen of Arkansas, and Contractor, a citizen of Arkansas, which obligated the Contractor to construct Owner's home for \$125,000 on Owner's Little Rock unimproved lot and provide construction financing, contains these paragraphs:

6. In lieu of a performance bond, Contractor agrees to prepare, execute and deliver to Owner the documentation required to create a valid, first lien against Contractor's homestead for the face amount of this Contract. This lien is intended to provide indemnification for Owner and to hold him harmless from all losses, damages, claims and costs that Owner might incur as a proximate result of Contractor's default.

9. This document constitutes a complete integration of the parties' entire agreement.

Work began immediately after the contract was signed. However, Contractor never provided the documents required under paragraph 6 of the Contract. Contractor's homestead is his only valuable asset.

When the Contract was approximately 25% complete, Contractor walked off the job and began working elsewhere. The work was finished by Second Contracting Company. Owner's total payments to contractor and Second Contracting Company were \$150,000.

Owner brings the Construction Contract to you and relates the above facts. You agree to represent him and he authorizes you to file a Complaint if required to protect his interests and to minimize his losses.

QUESTION 1

What do you do? If litigation ensues, prepare that single paragraph portion of the complaint (colloquially, the "wherefore" paragraph) through which you advise the court of the relief owner is seeking.

At trial, Contractor testifies:

CONTRACTOR: "I told Owner before he ever signed that Contract that my residence was already mortgaged and that the mortgagee would not release the prior lien."

QUESTION 2

As trial counsel for owner, what do you do?

Fact Situation B:

Mary, a prospective client, calls your recently opened law office and relates the following:

A package, addressed to me at my home, arrived about four months ago. Observing its address but not knowing its content, I opened it. It contained a set of five books on child rearing and a statement for \$350.00, including \$15.00 for shipping. The statement notes that they were sent on "30 day approval." Having not ordered the books but not wanting to spend the time or money to repackage and reship them, I set them aside on a book shelf. At the first of each succeeding month, I received more statements from the same book company, each being for the original amount, plus an ever-increasing finance charge. I have ignored all of them. Today, I received a telephone call from a bill collector, saying my delinquent account with the book

company had been turned over to him and that if I didn't pay within 10 days, he would sue me and make a negative report to the credit reporting companies. His tone was very intimidating. What should I do?

QUESTION 3

How do you advise her?

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**1 question
30 minutes**

CRIMINAL LAW & PROCEDURE

Four friends, Nero, D'Arc, O'Leary and Pyro, all of whom were between the ages of seventeen and nineteen, sat around in Pyro's bedroom drinking Budweiser and complaining about the fact that local officers from the Lawville, Arkansas Police Department had arrested three of them for underage possession of alcohol. The four were convinced that the police department was out to get them. After hours of discussion and a case of Budweiser, it was decided the four would get even with the Lawville Police Department by burning the police department's workout gym.

Each of the four was assigned a specific task. Pyro was to obtain a five gallon jug from his garage and go to the local Exxon station to fill it up with gasoline. Nero was to walk down, under cover of darkness, and scout out the area around the gym and determine the best way to gain entrance into the building. He also was to serve as the lookout as the building burned. O'Leary and D'Arc were to obtain certain combustible items which would be used to kindle the fire once inside the building.

As Pyro opened the door to his bedroom so that each of the four could leave to carry out his appointed task, he discovered Small Fry, his younger step-brother (age 13), listening at the door. It became apparent that Small Fry was aware of all the plans. O'Leary immediately grabbed Small Fry and drug him into the bedroom whereupon Pyro closed the door and locked all five of them inside the room. O'Leary told Small Fry that if Small Fry breathed a word of what had been discussed that they would kill him. Nero determined that in order to insure Small Fry's silence, Small Fry would be made a part of the group and, in fact, could assist Nero as lookout. Involving him in the crime, they reasoned, would force him to keep his mouth shut. Small Fry, believing he had no other choice, agreed.

As Pyro stepped out the front door of his house to walk to the Exxon station, his buddy, Sidekick, pulled up in his pickup truck. Pyro filled Sidekick in on all the details about burning the workout center. Sidekick offered to give Pyro a ride to the gas station and Pyro gladly

accepted. Upon obtaining the gas Sidekick returned Pyro to Pyro's home and Sidekick drove away.

After accomplishing their assigned tasks, the five participants rendezvoused at Pyro's house and then set out to the gym.

Once at the gym it was determined that Small Fry could better fit through the window chosen for entry and go around and open the door allowing the rest in. Small wry accomplished this task with no problems whatsoever.

Upon entering the building Pyro, O'Leary and D'Arc, along with Small Fry, looked through the building hurriedly, and took several small items which caught their fancy. These items included a pair of hinged handcuffs, some pads for weight lifting equipment, and a clip to a nine millimeter pistol, among other things.

Pyro then insisted they finish the business for which they came. O'Leary and D'Arc spread out and strategically located their kindling material and Pyro doused it with gasoline. Again, in order to assure Small Fry's silence, Small Fry was required to set the match.

Nero, who had remained outside as the lookout while the building burned, stuck his head in the door and urged his compatriots to hurry up and get out. with that, the five partners disappeared into the night.

Discuss what crimes, if any, were committed and by whom? Are any defenses available to any of the participants? If so, what defenses and for whom?

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**1 question
30 minutes**

EVIDENCE

On January 10, 1996, at 1:15 a.m., on a public street in the City of Little Rock, Arkansas, Pam Plaintiff was involved in a two car collision with another vehicle being operated by Dan Defendant. Pam Plaintiff was the sole occupant and operator of her vehicle.

Several days after the collision, Pam Plaintiff called Dan Defendant to ask him to pay for her damages. Dan Defendant replied to Pam Plaintiff as follows: "Look Lady, I don't want a hassle, I'll pay you \$200 to get this over with, but not a penny more." Pam Plaintiff responded: "Well, I'll just see you in court."

Pam Plaintiff then sued Dan Defendant in the Pulaski County Circuit Court for her damages received as a result of the collision.

PART A

At the trial of her claim, Pam Plaintiff's attorney attempts to have Pam Plaintiff testify about Dan Defendant's offer of \$200, which Plaintiff is offering for the purpose of proving that Dan Defendant was at fault. What objections(s), if any, should a competent defense counsel make to this prospective testimony; and how should the trial judge rule on the defense objection(s)?

PART B

At the trial of her claim, and after the Plaintiff has presented her case, Dan Defendant testifies upon his own behalf. The thrust of his testimony, if credited, would show that he did not cause the collision, and that the actual collision was very minor. During cross-examination by the Plaintiff's attorney, the Plaintiff attempts to impeach Dan Defendant's credibility by offering to introduce into evidence a certified copy of a court order from the Pulaski County Circuit Court showing that Dan Defendant was convicted of the offense of indecent exposure, a class A misdemeanor. The date of the conviction was March 25, 1994.

Under Arkansas law, a person convicted of a class A misdemeanor shall not receive a prison sentence in excess of one year. What objection(s), if any, should a competent defense counsel make to Plaintiff's effort to introduce the record of conviction into evidence; and how should the trial judge rule on the defense objection(s)? For purposes of this question, assume that there is no issue as to the authenticity of the record of conviction.

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**3 questions
30 minutes**

PROPERTY

QUESTION 1

Sam Seller owns White Acre, but he mistakenly thinks he owns Black Acre. Acting on this belief, he shows Bill Buyer Black Acre, represents that he owns it, sells Black Acre to Bill Buyer, issues Bill Buyer a warranty deed, and Bill Buyer records the warranty deed. Later Sam Seller discovers his mistake and obtains a warranty deed to himself from the true owner of Black Acre. Later, evidence arises that there may be oil under Black Acre. Sam Seller then sells Black Acre at a great premium to Freddy Latecomer who also receives a warranty deed from Sam Seller and records it. Bill Buyer then becomes aware of these other transactions and of the further fact that Freddy Latecomer is bulldozing a road through the property and is negotiating with an oil company to enter into an oil lease. Bill Buyer comes to you for advice as to what to do. Who should prevail in an action between Bill Buyer and Freddy Latecomer, why, and what

causes of action could Bill Buyer assert in trying to take care of this problem?

QUESTION 2

John and Mary Doe acquired title to Black Acre as tenants by the entirety. John Doe later signed a mortgage to this property, but Mary never joined in the execution of the mortgage. Later John Doe died leaving the note secured by the mortgage unpaid. The bank sues to foreclose the property. Mary objects. Who should prevail and why?

QUESTION 3

Tim Jones owns land on the west side of the river. Richard King owns land on the east side of the river directly across the river from Tim Jones' property. Each of their deeds calls for their adjoining boundaries to be the middle of the river. Tim Jones' land lies within a big sharp bend of the river. There is a flood, and the river changes channels by cutting through the bend. Richard King makes claim to this property as both deeds call for the line to run down the middle of the river. Tim Jones objects and states the property is still his. Who should prevail and why?

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**1 question
30 minutes**

TORTS

Chuck went to Harry's apartment Complex for a social visit. As Chuck entered the courtyard that divides Harry's apartment from his Neighbor's apartment, two dogs, a rottweiler and a pit bull which belonged to the Neighbor, attacked him. Chuck's arm was badly mutilated and required surgery. Chuck was rushed to Emergency Hospital where an IV was placed in his arm. After two hours without any observation from staff at Emergency Hospital, the IV bottle exploded, causing Chuck's IV needle to be torn from his arm.

1. Discuss the duty owed to Chuck from Harry's Neighbor and the duty owed by the Complex.
2. Discuss whether Neighbor or Complex had any continuing liability for harm done to Chuck at Emergency Hospital.
3. Discuss the elements of damages that Neighbor, Complex or Emergency Hospital owed to Chuck.